



DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DOI-2023-0027; DS65100000 DWSN00000.000000 24XD4523WS DP.65102]

RIN 1090-AB28

Privacy Act Regulations; Exemption for the Law Enforcement Records Management System

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior (DOI, Department) is proposing to amend its regulations to exempt certain records in the INTERIOR/DOI-10, DOI Law Enforcement Records Management System (LE RMS), system of records from one or more provisions of the Privacy Act of 1974 because of criminal, civil, and administrative law enforcement requirements.

DATES: Submit comments on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number [DOI-2023-0027] or Regulatory Information Number (RIN) Number 1090-AB28, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments.
- Email: DOI_Privacy@ios.doi.gov. Include docket number [DOI-2023-0027] or RIN 1090-AB28 in the subject line of the message.

- U.S. mail or hand-delivery: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI-2023-0027] or RIN 1090-AB28 for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, DOI_Privacy@ios.doi.gov or (202) 208-1605. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on Regulations.gov in the docket for this rulemaking.

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information about individuals that is maintained in a “system of records.” A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

Individuals may request access to records containing information about themselves under the Privacy Act of 1974, 5 U.S.C. 552a(b), (c) and (d). However, the

Privacy Act authorizes Federal agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation pursuant to 5 U.S.C. 552a(j) and (k).

The DOI Office of Law Enforcement and Security (OLES) maintains the INTERIOR/DOI-10, DOI Law Enforcement Records Management System (LE RMS), system of records to help DOI and its law enforcement bureaus and offices carry out responsibilities to prevent, detect, and investigate known and suspected criminal activity; detain and apprehend those committing crimes on DOI properties or Tribal reservations; manage investigations and law enforcement activities including use of force, critical incidents, property damage claims, traffic accidents, and domestic issues; and prevent visitor accidents or injuries on DOI properties or Tribal reservations. The system also contains statements and records of complaints, reports, correspondence from or about complainants, subjects, and victims of law enforcement investigations. Accordingly, records in the system are used during investigations and law enforcement activities and related criminal prosecutions, civil proceedings, and administrative actions.

A system of records notice for INTERIOR/DOI-10, Incident Management, Analysis and Reporting System, was previously published in the *Federal Register* at 79 FR 31974 (June 3, 2014); modification published at 86 FR 50156 (September 7, 2021). DOI published an updated notice elsewhere in the *Federal Register* concurrently with this notice of proposed rulemaking (NPRM) to update the title of the system to INTERIOR/DOI-10, DOI Law Enforcement Records Management System (LE RMS) and denote changes to the modified system.

Under 5 U.S.C. 552a(j) and (k), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of the Privacy Act of 1974.

The INTERIOR/DOI-10, DOI Law Enforcement Records Management System (LE RMS), system of records contains law enforcement records and investigatory material that are exempt from provisions of the Privacy Act of 1974 under 5 U.S.C. 552a(j) and (k). The DOI previously promulgated regulations at 43 CFR 2.254 to exempt records in this system from all provisions of the Privacy Act except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) pursuant to 5 U.S.C. 552a(j)(2); and to exempt records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

In this NPRM, DOI is proposing to amend its existing exemptions under 43 CFR 2.254 subsections (a) and (c) to reflect the new title of the system, INTERIOR/DOI-10, DOI Law Enforcement Records Management System (LE RMS), and to claim additional exemptions from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(3), (k)(5), and (k)(6) because this system of records contains material that support law enforcement activities and investigations. DOI may waive exemptions on a case-by-case basis where a release would not interfere with or reveal investigatory material compiled for law enforcement purposes, or reveal records on suitability, eligibility, or qualifications for Federal employment, military service, Federal contracts, or access to classified information, or compromise confidential sources. Exemptions from these subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records available to the individual named in the record upon request. Records in this system may contain investigatory records and material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Release of accounting of disclosures would alert the subjects of an investigation to the existence of the investigation, law enforcement activity or investigation, and the fact that

they are subjects of the investigation or could disclose confidential information that could be detrimental to national security. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature and scope of an investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552a(d); (e)(4)(G) and (e)(4)(H); and (f). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Records in this system may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Granting access to these records in the system could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, the nature and scope of the information and evidence obtained, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, as well as their families; lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; and disclose investigative techniques and procedures. In addition, granting access to such information could disclose confidential information that could impact national security or could constitute an unwarranted invasion of the personal privacy of others.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The

application of this provision could impair investigations because it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after information is evaluated that the relevance and necessity of such information can be established for an investigation. In addition, during the course of an investigation, the investigator may obtain information which is incidental to the main purpose of the investigation, but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

4. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. The application of this provision could provide the subject of an investigation with substantial information about the nature and scope of that investigation, could provide information to enable the subject to avoid detection or apprehension, seriously impede or compromise an investigation, or the fabrication of testimony, and disclose investigative techniques and procedures. Additionally, the application of this section could cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promise(s) of anonymity and confidentiality. This could compromise DOI's ability to conduct investigations and to identify, detect and apprehend violators.

Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094).

Executive Order (E.O.) 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. Executive

Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

2. Regulatory Flexibility Act.

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-221)). This proposed rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act. This proposed rule is not a major rule under 5 U.S.C. 804(2). This proposed rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

3. Unfunded Mandates Reform Act.

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or on the private sector, of more than \$100 million per year. The proposed rule does not have a significant or unique effect on State, local,

or Tribal governments or the private sector. This proposed rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.) is not required.

4. Takings (E.O. 12630).

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. This proposed rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

5. Federalism (E.O. 13132).

In accordance with Executive Order 13132, this proposed rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

6. Civil Justice Reform (E.O. 12988).

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Does not unduly burden the Federal judicial system.
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

7. Consultation with Indian Tribes (E.O. 13175).

In accordance with Executive Order 13175, the Department of the Interior has evaluated this proposed rule and determined that it would have no substantial effects on Federally Recognized Indian Tribes.

8. Paperwork Reduction Act.

This proposed rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) is not required.

9. National Environmental Policy Act.

This proposed rule does not constitute a major Federal Action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., is not required because the proposed rule is covered by a categorical exclusion. We have determined the proposed rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

10. Effects on Energy Supply (E.O. 13211).

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

11. Clarity of this Regulation.

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (Pub. L. 111-274), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each proposed rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts,
Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior proposes to
amend 43 CFR part 2 as follows:

PART 2 - - FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461,
the Social Security Number Fraud Prevention Act of 2017, Pub. L. 115-59, September
15, 2017.

2. Amend § 2.254 by:

- a. Revising paragraph (a)(5);
- b. Adding paragraph (b)(4);
- c. Revising paragraph (c)(15); and
- d. Adding paragraphs (d)(4), (e)(9), and (f)(2).

The additions and revisions read as follows:

§ 2.254 - Exemptions.

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(a) * * *

(5) INTERIOR/DOI-10, DOI Law Enforcement Records Management System
(LE RMS).

(b) * * *

(4) INTERIOR/DOI-10, DOI Law Enforcement Records Management System
(LE RMS).

(c) * * *

(15) INTERIOR/DOI-10, DOI Law Enforcement Records Management System
(LE RMS).

(d) * * *

(4) INTERIOR/DOI-10, DOI Law Enforcement Records Management System
(LE RMS).

(e) * * *

(9) INTERIOR/DOI-10, DOI Law Enforcement Records Management System
(LE RMS).

(f) * * *

(2) INTERIOR/DOI-10, DOI Law Enforcement Records Management System
(LE RMS).

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Signed: _____

Teri Barnett
Departmental Privacy Officer
Department of the Interior

[FR Doc. 2024-00318 Filed: 1/9/2024 8:45 am; Publication Date: 1/10/2024]